

REMARKS

The May 6, 2003 Official Action has been carefully considered. In view of the amendments submitted herewith and these remarks, favorable reconsideration and allowance of this application are respectfully requested.

At the outset, it is noted that no period for reply is specified in the May 6, 2003 Official Action. Nevertheless, this Amendment and Request for Reconsideration is being submitted within three (3) months of the mailing of the May 6, 2003 Official Action, in the interest of expediting prosecution of this application.

In the May 6, 2003 Official Action, Claims 37, 38, 40, 42-50 and 59-70 have been rejected as allegedly failing to satisfy the written description requirement of 35 U.S.C. §112, first paragraph. This ground of rejection was maintained for the reasons given in the prior Official Actions dated March 29, 2001 and November 20, 2001.

Claims 37, 38, 40, 42-50 and 59-70 also stand rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to provide enablement that is adequate for the present claim scope. In support of this rejection, the Examiner asserts, at page 7 of the May 6, 2003 Official Action, that the "instant specification does not disclose the killing of any insect via the injection of a proteinaceous compound per se but only shows inhibition of growth and death via cells per se and from supernatant".

Enclosed with the May 6, 2003 Official Action was a Notice

of Draftperson's Patent Drawing Review in which certain objections were noted with respect to Figs. 1-3 of the drawings.

The foregoing rejections and objection constitute all of the grounds set forth in the May 6, 2003 Official Action for refusing the present application.

In accordance with the present amendment, Claim 37 has been amended to specify a composition comprising "at least one of (i) cells into which a nucleotide sequence of Fig. 2 (SEQ ID No: 1) have been introduced and (ii) a cellular extract from said cells". Claim 38 has been cancelled in favor of independent Claim 71, which calls for an insecticidally active composition comprising "at least one of cells, and a cellular extract, of Xenorhabdus nematophilus species selected from the group consisting of NCIMB 40886 and NCIMB 40887....". Claims 62, 68 and 70 have been amended so as to be dependent from Claim 71. Claims 40 and 59-61 have also been cancelled in accordance with this amendment.

No new matter has been introduced into this application by reason of any of the amendments presented herewith.

The recitation of "proteinaceous material", and wording to that effect with which the Examiner has taken issue, does not appear in the amended claims.

As presently amended, the claims are directed to two (2) categories of subject matter. The first category comprises cells which are transformed with the nucleotide sequence of SEQ ID No: 1, and supernatants of such cells, both of which have toxic

activity when administered orally to an insect. The second category comprises cells of the novel deposited strains, and supernatants thereof, both of which have toxic activity when administered orally to an insect. As such, the claims define subject matter that the Examiner has indicated to be in compliance with the enablement and written description requirements of 35 U.S.C §112, first paragraph. See the paragraph bridging pages 4 and 5 and the paragraph at the bottom of page 6 of the May 6, 2003 Official Action.

Regarding the requirement for submission of corrected drawings, which is referred to in the Notice of Draftperson's Patent Drawing Review, it is requested that this requirement be held in abeyance pending the indication of allowable subject matter.

In view of the present amendment and foregoing remarks, all of the claims now pending in this application are believed to be in condition for allowance. Accordingly, the issuance of a

notice of allowance is in order, and such action is earnestly solicited.

Respectfully submitted,

DANN DORFMAN HERRELL and
SKILLMAN, P.C.

Attorneys for Applicant

By Patrick J. Hagan
Patrick J. Hagan
Registration No. 27,643

PJH:jmn